support this. For his injuries, based on 100% liability, I award a sum of $4,000 by way of general damages. For special damages he has claimed:

(1) a sum of $40 being fees paid for his medical report which is not disputed by the defendants and which is allowed;

(2) a sum of $60 as damages to clothing. As there was no proof of this, I disallow this claim;

(3) a sum of $100/ as travelling expenses for which I allow only $50;

(4) a sum of $4,800 being loss of 6 months' income as a boat repairer at $800 per month. I have only P.W. 7's words that he earned $800 per month as a boat repairer and that he was incapacitated for 6 months. As with evidence of earnings, plaintiffs do tend to inflate the figures of their earnings and since in this case there was no supporting evidence, I consider a sum of $600/ as being a more reasonable figure and grant him a period of 1 month as total incapacitation. So for loss of earnings alone, I award the second plaintiff a sum of $600; and

(5) a sum of $200 as extra nourishment and food. As this does not necessarily arise, I disallow this claim.

On the whole then, I award the second plaintiff $690 by way of special damages.

Coming to the dependancy claim, the dependants of the deceased are the third to the eighth plaintiffs and they are his widow, his three infant children aged 5, 4 and 2 and his parents aged 52 and 50 at the time of death. The deceased was 25 years old then and he earned a livelihood as a butcher, earning an average of $1,800 a month out of which he contributed $1,400 for the upkeep of his family and parents. As with most cases of this nature, there was no satisfactory proof of earnings and I had only the widow's testimony on this. Bearing in mind the deceased's station in life, the needs of his young family and aged parents, I consider a sum of $800 per month would be sufficient to maintain a family of six people. Up to the date of trial, there has been a lapse of 1 year and 9 months since the accident and for the pretrial period, the dependency loss is calculated at 21 x $800 = $16,800. Being a self-employed man, I would expect the deceased to work until 65 years old and so he would still have at least another 38 years of working life. Taking 1/3 away for contingency, I would give him another 25 years of purchase and for this period at the rate of $800 per month, the Annuity Table comes out with a figure of $135,302 (to the nearest dollar).

The widow of the deceased, who is the third plaintiff also claims funeral expenses which has been agreed between the parties to be at $2,000.

On the whole then, there will be judgments:

(1) to the 1st plaintiff in the sum of $4,500 general damages, interest at the rate of 6% per annum from date of service of writ to date hereof, $1,060 special damages, interest at the rate of 3% per annum from date of accident to date hereof;

(2) to the 2nd plaintiff the sum of $4,000 general damages, interest at the rate of 6% per annum from date of service of writ to date hereof, $690 special damages, interest at the rate of 3% per annum from date of accident to date hereof;

(3) to the third, fourth, fifth, sixth, seventh and eighth plaintiffs in the sum of $152,102 being the dependency claim, interest at the rate of 3% per annum on $16,800 from date of accident until date hereof;

(4) to the third plaintiff for the agreed sum of $2,000 as funeral expenses, interest at the rate of 3% per annum from date of accident to date hereof; and

(5) costs to the plaintiffs.

Order accordingly.

Solicitors: *M. Segaram & Co.; Lawrence Dhillon & Associates.*

KATHAVARAYAN v. NG SUP MOI & ANOR.

[O.C.J. (Siti Norma Yaakob J.) August 19, 1985]

[Kuala Lumpur – Civil Suit No. P. 192 of 1980]

Medical profession – Negligence – Lack of medical care and attention – Patient's leg in plaster of paris – Constriction of blood vessels – Volkmann's Ischemia – Amputation.

Professional Negligence – Lack of medical care and attention – Claim for damages – Leg covered with plaster of paris – Constriction of blood vessels – Volkmann's Ischemia set in – Amputation – $53,500 awarded as general damages.

Damages – Fracture of upper tibia of left leg with haemarthrosis on left knee – Loss of left leg – Leg amputated.

Tort – Negligence – Medical Profession – Lack of medical care and attention – Damages.

The plaintiff was injured as a result of a motor accident involving his motor cycle and a car driven by the first defendant. As a result of the accident the plaintiff suffered a close fracture at the upper tibia of his left leg with haemarthrosis of his left knee. Initially when the plaintiff went to the Casualty Unit of the General Hospital the doctor on duty covered the plaintiff's leg with plaster of paris. The plaintiff suffered severe pain. Thereafter the severe pain was diagnosed as Volkmann's Ischemia. The plaintiff underwent numerous hospital treatments. Despite this he completely lost the use of his left leg. It had become shorter by 6 inches. There was deformity on his ankle. He could not dorsiflex his foot nor feel any sensation to it. Subsequently the left leg was amputated below the knee. The plaintiff sued the first defendant and the second defendant, the Government of Malaysia. At the date of the trial the plaintiff was 45 years old. He was a moulder earning a monthly salary of $575.00.

Held: (1) the first defendant is 20% liable and the second defendant is 80% liable;

(2) General Damages are awarded as follows:

(a)	Fracture to upper tibia of left leg with haemarthrosis on left knee	$ 3,500
(b)	Loss of left leg	$50,000
(c)	Loss of future earnings	$21,957;

Damages for loss of future earnings totalling $21,957 was to be borne wholly by the second defendant following the decision in *Kow Nan Seng's* case;[1]

(3) special damages of $4,900 as agreed between the parties is awarded;

(4) costs were awarded to the plaintiff and were to be borne by both defendants in proportion to their liability.

Cases referred to:

(1) *Kow Nan Seng* v. *Nagamah & Ors.* [1982] 1 M.L.J. 128.
(2) *Public Prosecutor* v. *Datuk Tan Cheng Swee & Anor.* [1980] 2 M.L.J. 276.
(3) *Sam Wun Hoong* v. *Kader Ibramshah* [1981] 1 M.L.J. 295.
(4) *Lee Yew Hoe* v. *Lee Bock Huat* [1980] 2 M.L.J. 271.
(5) *Yeap Cheong Hock* v. *Kajima-Taisei Joint Venture* [1973] 1 M.L.J. 230.
(6) *R. J. McGuinness* v. *Ahmad Zaini* [1980] 2 M.L.J. 304.
(7) *K. Ratnasingham* v. *Kow Ah Dek & Anor.* [1983] 2 M.L.J. 297.

CIVIL SUIT.

Armerick Sidhu for the plaintiff.

S. Kanagasabapathi for the first defendant.

P.M. Mahalingam (Senior Federal Counsel) (*Miss Josephine Siva and Mohamed Raof* with him) for the second defendant.

Cur. Adv. Vult.

Siti Norma Yaakob J.: On January 29, 1978, at about 4.30 p.m., the plaintiff was proceeding along Jalan Tun Razak on his motor cycle and heading in the direction of Cheras. At the junction of Jalan Tun Razak and Jalan Ampang, he was to have proceeded straight to Cheras but his motor cycle was involved in a collision with a car driven by the first defendant that was also proceeding along Jalan Tun Razak but from the opposite direction and was turning right into Jalan Ampang at the junction. As a result of this accident, the plaintiff suffered a close fracture at the upper tibia of his left leg with haemarthrosis of his left knee, *i.e.* a collection of blood within the knee joint giving rise to swelling.

At the Casualty Unit of the General Hospital where he was brought immediately after the accident, the doctor on duty, D.W.2, attended to his injuries. His injured leg was X-rayed and D.W.2 applied a full length plaster of paris to it that completely covered the plaintiff's leg all the way from his thigh downwards, exposing only the tips of his five left toes. He was warded and that night, following his complaint of severe pain, the doctor-in-charge of the Casualty Ward, D.W.3, sedated him heavily with 2 different types of tranquillizers and on the following morning, he was discharged and told to come back for outpatient treatment on February 14, 1978. He, however, came back to the hospital 4 days later, complaining of severe pain and D.W.3 who had treated him earlier, supplied him with pain killers, sent him home and he was told to keep his appointment on February 14, 1978.

On February 14, 1978, the plaintiff returned to the General Hospital, still complaining of severe pain to his injured leg and this time, D.W.3, diagnosed his complaint as Volkmann's Ischemia, the effect of which had left his left leg dead as he could not move his toes or feel any sensation as the tissues had died from lack of blood supply, which had been cut off by the obstruction caused by the plaster of paris. He was warded and the plaster of paris immediately removed and from then onwards followed a series of treatments aimed at trying to save the plaintiff's left foot and which also required him to be admitted and discharged from hospital several times.

For 2 months he was made to exercise his left leg by pulling a string that was attached to a piece of wood placed under his toes. There was no improvement to this treatment and ulcers began to develop on his leg and foot. He underwent 2 operations, first for a disarticulation of the left big toe and secondly, amputation to his 2nd, 3rd and 5th toes. Drainage was also done on 2 occasions for the ulcers on his leg and he had daily Eusol dressing for the chronic ulcers on his foot and put on vasodilator drugs, *i.e.* drugs to dilate the blood vessels. He was finally discharged from hospital on April 13, 1979, but he attended regular follow-up treatment at the outpatient clinic.

However, all these treatments proved useless and by November, 1979, he had completely lost the use of his left leg. It had become shorter by 6", there was deformity on his ankle, he could not dorsiflex his foot nor feel any sensation to it. On his last visit to the hospital on November 27, 1979, he was told by a doetor that to straighten his leg he needed to undergo an operation that required 3 incisions, one on his foot, another just below his ankle and the third behind the heel just above the ankle. He was also warned that if the operation proved unsuccessful, it might become necessary to amputate his leg.

Dissatisfied with the treatment that he had received so far, the plaintiff saw a private orthopaedic surgeon, Dr. Petam Singh, P.W.2, on December 3, 1979 and following his advice, P.W.2 amputated his left leg below the knee on February 8, 1980 and the plaintiff is now fitted with a below the knee artificial limb.

These facts are not disputed and at the outset of the trial, the first defendant concedes liability in so far as the accident is concerned but disputes liability for the damages that may be awarded to the plaintiff as a result of his losing his left leg and the main issue before me is to what extent are the first and second defendants liable for the injuries suffered by the plaintiff. Determination of this issue naturally follows as to whether the second defendant can be made fully liable for the negligent acts or omissions of its servants or agents in failing to properly treat the plaintiff resulting in his left leg being amputated.

It is not disputed that Volkmann's Ischemia sets in when there is total or partial interference of blood supply to the limbs. In total interference, a patient complains of pain and numbness within 2 to 3 hours and after 6 to 12 hours, the muscles will die and after about 24 hours, the skin will die. The process becomes irreversible after a period of 12 hours.

For partial interference, this depends on the degree of obstruction and if there is a tight plaster cast over the injured area, this will constrict the muscles, causing a reduction of blood supply leading to swelling.

Of the four doctors called to testify, three at least agreed that regardless of whether interference is total or partial, the first symptom will be pain. Another symptom is the absence of the patient's pulse distant from the fractured area. If it is not possible to feel this pulse as when a plaster cast had already been applied over it, the doctor must test the nail circulation by suppressing the nail and seeing how long it takes for the colour to return and comparing it to a non-fractured site. The doctor must also look at the colour of the skin. If Volkmann's Ischemia has set in, the skin would be pale, the limb cold and the patient may not be able to move his toes and may also complain of numbness. If swelling develops and the plaster does not allow expansion, this may lead to further obstruction of blood supply and more swelling. Once Volkmann's Ischemia had been diagnosed, the first thing to do is to remove the external bandage or plaster that caused the obstruction and to observe for signs of improvement of circulation. If this does not occur, in 1 or 2 hours, surgery may become necessary to expose the blood vessels.

In this case, it is also not disputed that interference to the blood supply to the plaintiff's left leg was partial and for that reason, symptoms like loss of sensation to the toes and paleness of the skin were not apparent on the night of January 29, 1978. However, since the plaintiff had complained of severe pain, this should have alerted a doctor attending such a patient of the possibility of complications like Volkmann's Ischemia setting in. However, Volkmann's Ischemia was only diagnosed by D.W.3 on February 14, 1978, 15 days after the plaster of paris was applied to the plaintiff's leg. For this reason, the second defendant maintains that for the Court to hold it liable, the plaintiff must prove when Volkmann's Ischemia had set in. I do not consider that this is relevant for the determination of liability as what is more important is in whose care the plaintiff was placed from the time he suffered the leg injuries following the collision. It is undisputed that from the time he was taken to the General Hospital following the collision on January 29, 1978, until

his final discharge on April 3 1979, he was under the medical care and control of the second defendant. Some complication must have set in from the time he was admitted on January 29, discharged on January 30 1978 and readmitted again on February 14 1978 as by this time, his leg was devoid of any movement or sensation and the skin was dry. To ascertain what or how this complication came about, I shall now deal with the events that occurred from the time the plaintiff was brought to the General Hospital.

On the night of the accident, after the plaster of paris had been applied, the plaintiff had complained of excruciating pain. D.W. 3 who examined him attributed such pain to the fracture as he considered that pain is not one of the signs of Volkmann's Ischemia. However, when cross-examined, he agreed that once a fracture had been mobilised in a cast and the affected bone cannot move, the pain would be less than when the fracture had been left unattended. The fact that the plaintiff had been complaining of excruciating pain, should have alerted D.W.3 to the possibility of complication but he did nothing but only prescribed a high dosage of 2 different types of tranquillizers, a shot of largactil to relieve the plaintiff of pain and a tablet of Vallium to knock him off to sleep. D.W.3 also testified that before prescribing the tranquillizers, he did look for tell tale signs of Volkmann's Ischemia. As he could not feel his pulse, he looked at the colour and movements of his toes and found them to be intact. As there was no positive finding, he had not recorded this examination and his finding anywhere and when he testified as to the tests he had carried out on the plaintiff, he was doing so out of sheer memory. That happened 6 years ago and it is highly unlikely that D.W.3 could remember minute details as to the particular tests he conducted on the plaintiff on the night of January 29, 1978, especially so in the intervening period, he must have seen hundreds of patients in the Casualty Ward. The fact that he had failed to record such tests and findings points more to the possibility that he did not carry them out at all and this explains why he did not suspect something was amiss when the plaintiff complained of excruciating pain to a fracture that has been treated. The pain, if any, should decrease and not increase as did happen in this case.

Having failed to detect the possibility of any complication setting in on the night of January 29 1978, D.W.3 should at least suspect that the treatment he had prescribed to the plaintiff was not the right treatment when he saw the plaintiff again 4 days after his discharge and long before the due date of his appointment. Nothing was minuted by D.W.3 of this visit or of the examinations he had carried out on the plaintiff in D.19, the plaintiff's clinical record, and again, he relies on his memory to state that he did carry out the necessary tests to rule out Volkmann's Ischemia.

The plaintiff had testified that he had complained of excruciating pain on his leg and I do not see how he can lie on this as that was the only reason why he had seen D.W.3 earlier than his appointment date. He also testified that D.W.3 hardly examined his foot but prescribed him with pain killers and told him to come back on February 14, 1978. Again I see no reason to doubt the plaintiff's testimony as to the offhanded manner in which D.W.3 reacted to his complaint and that D.W.3 did nothing to relieve the plaintiff other than gave him pain killers. Despite his evidence to the contrary, I do not believe that D.W.3 had examined the plaintiff's foot closely for if he had done so, he would, in the ordinary exercise of care, have detected or suspected that the plaster cast was not doing its work in treating the plaintiff's leg and this would have prompted him to consider other alternative treatment to ease the pain. Even D.W.4 had to admit that if he had examined the plaintiff that day, he would have no hesitation in splitting open the plaster cast. By this very act of omission alone, D.W.3 had shown himself to be highly negligent in his treatment of the plaintiff.

I am also satisfied that the medical evidence has shown that the obstruction to the blood supply of the plaintiff's lower limbs was caused by the plaster of paris being applied without due consideration to the presence of the haemarthrosis on the plaintiff's knee. Once a limb is constricted even slightly, the blood flow is reduced and if there is any swelling around the area, this increases the swelling. Because of the presence of the haemarthrosis at the knee and because of the site of the fracture, the plaster of paris must have caused a higher degree of constriction. This had led to further swelling to the plaintiff's leg and the resulting pain that followed should have alerted D.W.3 of the strong possibility of the blood supply being obstructed to the plaintiff's lower limbs. Had he then exercised proper care in examining and diagnosing the plaintiff's complaint on the night of January 29 or 4 days after the plaintiff was discharged, he would have suspected that the plaster cast had become too tight and was obstructing the flow of blood supply to the plaintiff's lower limbs. As it was, he only diagnosed that the

leg had become ischematic on February 14 1978, but by that time, the damage had already been done and for that matter I consider that for the purposes of liability, it is immaterial what happened after that date.

What in fact happened after that date were the various treatments attempted by a number of doctors led by the Head of Oethopaedic Unit, D.W.4, to cover the mistake made by D.W.3. In this respect, D.W.4 went even further to state that it was morally wrong of P.W.2 to have suggested amputation to the plaintiff as such suggestion should come from the plaintiff himself and not from the doctor treating him. However, when confronted with AC 17, the report he made of the plaintiff in 1980, D.W.4 could not run away from his statement in that report that amputation had been suggested to the plaintiff whilst he was under the care and treatment at the General Hospital long before the plaintiff saw P.W.2. This was also supported by the plaintiff himself who testified that on his last out-patient treatment at the General Hospital, he was advised to agree to an operation to straighten his leg but was also warned that if the operation proved unsuccessful, it may become necessary to amputate his leg. Thus, D.W.4 cannot be right when he testified that it was morally wrong of P.W.2 to have amputated the plaintiff's leg as it is clear that what P.W.2 did was to put an end to the plaintiff's sufferings and to arrest any further complication that may arise.

There is also one further aspect of D.W.4's evidence which I found most suspect and which was yet another attempt on his part to cover the mistake made by D.W.3. He had testified that after the plaster cast was removed from the plaintiff's leg on February 14 1978, the plaintiff could no longer feel any sensation or move his toes but D.W.4 still considered the leg to be viable as there was an entry dated February 14, 1978 in D.19 to show that at least one pulse on the top of the foot near the ankle was felt whilst the other behind the ankle was not felt. This is described by the words "Dorsalis Pedis+ Posterior Tibial Anterior not felt." D.W.4 contends that the + sign next to the words "Dorsalis Pedis" means that the pulse was felt otherwise the negative symbol -ve would have been written instead. Reading the various entries in D.19, I see that the words "positive" and "negative" whenever used are sometimes abbreviated as "+ ve" and "– ne." If indeed the doctor who made the entry on February 1978 had meant that only one pulse was felt, he would have used the accepted positive symbol "+ve" to indicate that the pulse on the top of the foot near the ankle was felt and "-ve" for the other pulse that was not felt. He, however, used neither of these symbols but chose instead to put a "+" sign after the words "Dorsalis Pedis" and the words "not felt" after the words "Posterior Tibial Anterior." As the doctor who made such an entry was not called to explain what he meant by the "+" sign entry and since the accepted symbols were not used, in all probability, the "+" sign means nothing more then the abbreviation of the word "and", in which case, D.W.4 is again not correct when he testified that the pulse on top of the foot was felt whilst the other behind the ankle was not felt.

From the evidence adduced, the second defendant cannot possibly escape from being liable for the negligent acts and omissions of D.W.3 in failing to provide the plaintiff with the necessary medical care and attention. Having held so, I now consider whether liability for the plaintiff's loss of his left leg can in anyway be apportioned between the first and second defendants. For this I was referred to the case of *Kow Nan Seng* v. *Nagamah & Ors.*[1] where under similar circumstances, the Federal Court apportioned liability at 20% against the appellant, the other person involved in the accident with the first and second respondents, and 80% on the part of the Medical Officer and the Government of Malaysia, the third and fourth respondents in the appeal. Counsel for both the plaintiff and first defendant had urged me that I should depart from the decision of the Federal Court and should not consider apportionment at all as the facts of the case are so clear as to make it unjustifiable that the first defendant should be held to be in anyway liable for the negligence of the second defendant.

The principle of *stare decisis* has long been accepted by our Courts and this was reaffirmed again in the case of *Public Prosecutor* v. *Datuk Tan Cheng Swee & Anor.*[2] where the Federal Court held that "the principle requires more than lip service." Being a lower tribunal, I am duty bound to follow the precedent set by the Federal Court and to that extent, apportion liability between the first and second defendant at 20% and 80% respectively.

For the plaintiff's initial injuries namely the fracture to the upper tibia of his left leg with the haemarthrosis on his left knee, I award a sum of $3,500/– for pain and suffering. As the first defendant has admitted liability for these injuries, there will then be judgment to the plaintiff against the

first defendant on this award which will also carry interest at the rate of 6% per annum from the date of service of the writ on the first defendant to date hereof.

As for the loss of his left leg, awards for injuries of his nature range from $32,500 to $50,000 in the following 4 cases.

(1) In *Sam Wun Hoong* v. *Kader Ibramshah*[3] $35,000 was awarded in 1981 for a below the knee amputation.

(2) In *Lee Yew Hoe* v. *Lee Bock Huat*[4] the Singapore High Court awarded $40,000 in 1980 for an above the knee amputation.

(3) In *Yeap Cheong Hock* v. *Kajima-Taisei Joint Venture*[5] $32,500 was awarded in 1971 for a leg amputation.

(4) In *R.J. McGuinness* v. *Ahmad Zaini*[6] the Brunei High Court awarded $50,000 in 1980 for an amputation above the knee and severe commuted fractures of the tibia and fibula.

From the evidence, it is clear that the plaintiff suffered immensely for over 2 years and during that period, he underwent 2 operations, the first when his big toe was disarticulated and the second when his 2nd, 3rd and 5th toes were amputated. Before the accident, he was an athlete and from 1959 to 1978, he participated actively in the Annual Sports of the Malayan Railways organised by the Railway Sports Council. Bearing in mind the unnecessary pain and suffering caused to the plaintiff for a period well over 2 years and the loss of amenities as a result, I consider $50,000 as a fair and reasonable compensation. As this amount forms part of general damages, it will also carry interest at the rate of 6% per annum from the date of service of the writ on the defendants to date hereof and judgment therefore is entered against both the defendants to the extent of their liability as apportioned above.

The plaintiff has also claimed various items of special damages as stated in his Statement of Claim and except for 2 items that were disputed, the rest of the special damages had been agreed at $4,900/–. The 2 disputed items of the special damages are:

(1) his claim for loss of earnings based on the loss of his prospect of promotion, which in turn leads to loss of full pension benefits and loss of employment after retirement.

(2) transport expenses in going to and from his place of work.

At the date of the trial, the plaintiff was engaged by the Malayan Railways as a Moulder, moulding parts for locomotives and as this entails carrying heavy metals, his output of work has been greatly affected by the handicap to his leg. That being the case, his Personnel Officer, P.W.3, testified that his promotional prospects are slim and although D.W.1, the Administrative Officer in the Malayan Railway, was not asked of his chances for promotion, he, D.W.1 nonetheless, agreed that the plaintiff's incapacity had affected his work and he considered that he could not be given any other lighter job with the same promotional prospects and same salary. This to me is a clear indication that promotion, as far as the plaintiff is concerned, is practically nil.

At the date of the trial, the plaintiff was 45 years old and this means he had another 10 years of service before he retires at 55. As a Moulder, he earns a monthly salary of $575/– and the promotion that will be denied him carries a salary of $750/–, thereby, leaving him with a loss of $175/– per month. So for 10 years purchase based on the loss of $170/– per month (the Annuity Tables only calculate in denominations of tens), I award him a sum of $15,752.00, for this future loss of earnings. The plaintiff has also claimed pre-trial loss but as there is no evidence to show that before the trial, he had already been placed in the seniority scale for which promotion can be considered for him, I disallow his claim for pre-trial loss. He has also claimed that since he will not be promoted, he will lose the full benefit of his pension when he retires at 55. At that age, his pension would be calculated on half of his last drawn salary as by then, he would have served well over 25 years and since his prospect of promotion is nil, his last drawn salary before retirement would be reduced resulting in him earning a reduced pension. That being the case, I allow loss on half the difference of the salary that he would have earned had he been promoted and his present salary and giving him 8 years purchase after his retirement, I allow him a sum of $6,205/– (calculated to the nearest dollar), being the loss from the reduced pension.

In addition, the plaintiff also claims loss of post retirement earnings as he considers that he can still seek gainful employment after his retirement but under the circumstances, his chances of getting any was nil. I disallow his claim as the plaintiff must now come to terms with his incapacity and he should therefore mitigate his loss by seeking employment of a more sedentary nature. In this connection, the case of *K. Ratnasingham* v. *Kow Ah Dek & Anor.*[7] is distinguishable as the

appellant in that case was a man possessed of both professional and technical skills. He started as a teacher and bettered his position by obtaining a Bachelor of Arts (Honours) degree in History and at the time of his accident he was a Division I officer in the Government Service and clearly marked out for promotion. The plaintiff in the case before me possesses no professional or technical skill of any kind and should he be able to get some form of employment after his retirement, it would be more of a sedentary nature.

Lastly, the plaintiff claims transport expenses to get to work both pre-trial and post-trial, but I am disallowing this item as such expenses have always been incurred by him even before the accident, the only difference is that since the accident, he is not able to use his motor-cycle to work. Before the accident he had incurred transport expenses in the purchase of petrol for his motor-cycle.

So for the special damages, judgment is entered for the plaintiff on the agreed sum of $4,900/- which will carry interest at 3% per annum from date of accident until date hereof to be borne by both defendants in proportion to their liability. There will also be judgment to the plaintiff for loss of future earnings totalling $21,957/- ($15,752 + $6,205) to be borne wholly by the second defendant following the decision in *Kow Nan Seng's* case above.

Finally, costs are also awarded to the plaintiff which will also be borne by both defendants in proportion to their liability.

Order accordingly.

Solicitors: *Khoo & Sidhu; R.K. Nathan & Co.*

LEE ANN v. MOHAMED SAHARI BIN ZAKARIA

[O.C.J. (Peh Swee Chin J.) November 28, 1985]

[Muar – Civil Suit No. 111 of 1984]

Damages – Paralysis – Injury to thoracic vertebra and leg shortening 2 c.m. – Plaintiff aged 64 years old.

Road Traffic – Plaintiff knocked down from behind – Defendant motorcyclist wholly to blame – Damages.

On October 3, 1982, the plaintiff, then 64 years old, was walking on a street when she was knocked into from behind by the defendant and his motor-cycle. The plaintiff sustained spinal injuries, resulting in paralysis from the waist down. She also suffered a 2 c.m. shortening of a leg. The plaintiff claimed damages while the defendant disputed liability.

Held: (1) in the circumstances the defendant is liable to the plaintiff who was not guilty of any contributory negligence;

(2) *General Damages:*

(a) fracture of a thoracic vertebra causing paralysis from the waist down : $70,000;

(b) fracture of tibia and fibula and 2 c.m. shortening : $6,000;

(c) loss of expectation of life : $2,000;

(d) pain and suffering in connecting with bladder washings : $7,000;

(e) laceration of right elbow : $300.

All the sums mentioned above would carry 8% interest per annum from date of service to date of satisfaction;

(3) *Special Damages:*

(a) cost of nursing care for 1983 : $200 p.m.;

(b) cost of nursing care for 1984 : $250 p.m.;

(c) from January 1, 1985 to date of judgment : $300 p.m.;

(d) cost of future nursing care at 5 years' purchase : $350 p.m.;

(e) cost of wheelchair $420;

(f) cost of surgery already incurred: $2,808;

(g) cost of washing bladder at 5 years' purchase : $150 p.m.;

(h) travelling expenses also awarded;

All the above sums would carry interest at 4% per annum from date of accident to date of judgment and thereafter at 8% per annum until satisfaction.

Cases referred to:

(1) *Wong Eng* v. *Chock Mun Chong* [1963] M.L.J. 204.

(2) *Esso Petroleum Co. Ltd.* v. *Southport Corporation* [1955] 3 All E.R. 864; [1956] A.C 218; [1956] 2 W.L.R. 81.

(3) *Playing Cards (M) Sdn. Bhd.* v. *China Mutual Navigation Co. Ltd.* [1980] 2 M.L.J. 182.

(4) *Flint* v. *Lovell* [1935] 1 K.B. 354.

(5) *Rose* v. *Ford* [1937] A.C. 826.

CIVIL SUIT.

E. Ramasamy for the plaintiff.
Abdul Hamid Said for the defendant.

Cur. Adv. Vult.

Peh Swee Chin J. : Before dealing with the questions of liability and quantum in this running-down case, I think I should dispose of first, an